

Faxed to MJ Mannion  
on 1/6/03.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

Civil No. 1:01-0817

(Judge William W. Caldwell)

(Magistrate Judge Malachy E. Mannion)

JURY TRIAL DEMANDED

**FILED**  
HARRISBURG, PA

JAN 06 2003

MARY E. D'ANDREA, CLE  
Per MD  
Deputy Clerk

**CORRECTIONS DEFENDANTS' MOTION FOR  
AN ENLARGEMENT OF TIME**

The Corrections Defendants, by and through their attorney, John J. Talaber, Assistant Counsel, respectfully request this Honorable Court to grant them an enlargement of time until Tuesday, January 21, 2003 to file their Supporting Brief, Statement of Material Facts, and Supporting Documents to their pending Motion for Summary Judgment. The following averments are made in support of this Motion:

**Parties and Nature of Action:**

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.

2. The Department of Corrections Defendants (“Corrections Defendants”) include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis; (9) Robert Glenney; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whysong; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.
3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.
5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

**Relevant Procedural History:**

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On or about September 26, 2001, the undersigned attorney waived service of summons for the Corrections Defendants.
12. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).
13. On October 24, 2002, the Court granted the Defendants' Motion for discovery and dispositive motion deadlines; specifically, the Court directed that discovery be completed on or before November 12, 2002, and dispositive motions filed by December 13, 2002. (Doc. 89)

14. On December 13, 2002, the Corrections Defendants filed their Motion for Summary Judgment, as did the Non-Corrections Defendants. (Docs. 99, 100).
15. On December 19, 2002, by joint motion, The Defendants requested an enlargement of time until January 6, 2003 to file their statements of material facts, supporting briefs, and supporting documents to their respective motions. (Doc. 103).
16. The Court, by order dated December 20, 2002, granted the Defendants' Joint Motion and directed the aforementioned documents be filed on or before January 6, 2003.<sup>1</sup> (Doc. 105).
17. The Corrections Defendants' Brief, Statement of Material Facts, and Supporting Documents are now due.

**Request for an Enlargement of Time:**

18. The Corrections Defendants, by and through the undersigned attorney, respectfully request an enlargement pursuant to Fed.R.Civ.P. 6(b) until Tuesday, January 21, 2003 to file and serve the documents listed in paragraph 17, *supra*.

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<sup>1</sup> Additionally, pending before the Court are: (a) Plaintiff's Motion for a Temporary Restraining Order (doc. 93), and (b) Plaintiff's Motion to Compel (Doc. 92). The Corrections Defendants' have filed Briefs in Opposition to each Motions (docs. 106, 107). Plaintiff's Reply Briefs, if any, were due on January 2, 2003.

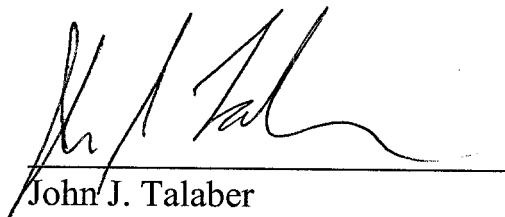
19. Federal Rule of Civil Procedure 6(b) provides, in part, that “[w]hen by these rules . . . an act required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefore is made before the expiration of the period originally prescribed . . . .”
20. Simultaneous with this Motion, the Corrections Defendants are filing a Motion for Leave to exceed the fifteen (15) page or five thousand word limitation for their Supporting Brief as is mandated by Pa.MDLR7.8(b).
21. In reviewing the discovery materials and drafting the Corrections Defendants’ Brief, counsel found that additional pages (words) are necessary to touch upon the issues against the twenty-eight (28) Corrections Defendants in this matter.
22. Additionally, this Motion is necessary so counsel can contact and consult with his clients in this matter for clarification (and possible declarations) on the facts; some of whom were not available the past few weeks due to the holiday season.
23. Finally, as PAMDLR 7.8(b) requires the Motion to Exceed be filed at least two working days prior to the Brief being filed, counsel requests a very short enlargement of time so that the latter Motion can be resolved.

24. Absent extraordinary circumstances, counsel will not request additional enlargements of time for this matter.

**WHEREFORE**, for the reasons set forth above, the Corrections Defendants respectfully request the Court to grant them an enlargement of time until Tuesday, January 21, 2003, to file their Supporting Brief, Documents, and Statement of Material Facts to their Motion for Summary Judgment.

Respectfully submitted,  
Office of General Counsel

BY:

A handwritten signature in black ink, appearing to read "John J. Talaber", is written over a horizontal line.

John J. Talaber  
Assistant Counsel  
Pa. Department of Corrections  
55 Utley Drive  
Camp Hill, PA 17011  
(717) 731-0444  
Attorney No. 83279

Dated: January 6, 2003

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# CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Motion for Enlargement of Time in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail  
addressed as follows:

Kim Smith, CT-2162  
SCI-Coal Township  
1 Kelley Drive  
Coal Township, PA 17866-1020

James D. Young, Esquire  
Lavery, Faherty, Young and Patterson, P.C.  
301 Market Street  
P.O. Box 1245  
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Marilyn Jones  
Marilyn Jones  
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Dated: January 6, 2003